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MEETING OF AMERICAN BAR ASSOCIATION — TRIAL BY JURY. — At the recent meeting of the American Bar Association, the well-worn subject of trial by jury furnished one of the chief topics for discussion. Hon. Alfred Russell, of Michigan, in the annual address, favored, in civil cases, the abolition of the jury, while a majority committee report advocated the less radical change of allowing a verdict in such cases by three-fourths of the jury.

The advisability of a total abolition of the jury, although there has been a constant pressure on the part of lawyers towards it for many years, seems very doubtful, but the suggestion of a majority verdict in civil cases more readily commends itself to our favor. The idea is by no means a new one among either English or American jurists. Such English authorities as Hallam, Christian, and Bentham have heartily condemned the rule of unanimity as a "preposterous relic of barbarism." Then a parliamentary commission of experts in 1830 reported in favor of a verdict by three-fourths of the jury if after twelve hours' deliberation it could not reach a unanimous verdict. Still later Lord Campbell introduced a bill to carry such a measure into effect. As yet, however, the rule in England stands unchanged. In America, too, many eminent jurists, Mr. Justice Miller among the number, have expressed themselves in favor of the abolition of the requirement of unanimity.

"The verdict of the jury under the unanimity rule." says this committee report of the Bar Association, "is often not gained by the justice of the case, but a compromise. Its effect is to prolong controversies, defeat justice, produce discontent, and bring the administration of the law into contempt." Then following out the idea of the English commission report in 1830, the report goes on: "All the benefit of deliberation would be gained by requiring the jury to continue the consideration for several hours and permit then the verdict of a majority to be given. To demand more of the jury than is demanded of other tribunals seems without the support of sound reason." [1]

[1] Taken from newspaper report of the meeting.

The right of the Legislature to change the ordinary rule of procedure, so that a verdict may be rendered by less than the whole of the jury, has been embodied in the constitutions of at least three States (California, Texas, Nevada), and the new practice has been found to work well. In criminal cases where guilt must be proved beyond a reasonable doubt there is a distinct reason for requiring unanimity which does not exist in civil cases, where proof needs only to be by preponderance of evidence. In this country and in England, therefore, there has been scarcely a suggestion of any change in the criminal jury. In Scotland and France, however, it is interesting to note that in criminal cases a majority verdict convicts, France having no civil jury, and Scotland discharging its civil jury after six hours' deliberation, if in that time it does not reach a unanimous verdict.

"If it could be assumed," says Judge Pitman, in a magazine article,[1] speaking of the rule of unanimity, "that the dissentient jurors were fairer or wiser than the majority, we could tolerate it well; but unfortunately the alliance between ignorance and obstinacy well known of old continues. . . . In civil cases where a preponderance of evidence alone is required, it would seem that sooner or later the practical American mind would conclude that when this preponderance was made out to the satisfaction of at least three-fourths of the jury and of the court it was time to make an end of litigation, especially when we consider that this state of things would almost certainly foreshadow the ultimate result, the present acceptance of which would merely avoid one of those calamitous delays of the law which have tired out sturdier natures than that of Hamlet."

Liability of Elevated Railway Companies to Abutters. — The case of *Pappenheim* v. *The Metropolitan Elevated Railway Company* has recently been decided in the New York Court of Appeals. In this case plaintiff purchased property on the line of the road after the road was fully established. He then brought this action for damage done to his property by the operation of the road. The defendant contended that as soon as the railroad went into operation, the damage to the property of abutters was completed once for all. That, as the plaintiff bought subsequently to this time, he received, in the lower price which he paid for the property, a due allowance for the damage inflicted by the defendant, and therefore his recovery, if any, should be for nominal damages only. Peckham, J., in deciding for the plaintiffs, took the ground that the defendant's act in maintaining their railroad in the highway was a continuing trespass on the abutter's property. The grantor of the plaintiff undoubtedly had a right of action against the defendant, but that fact made the defendant's act no less a wrong to the plaintiff. Nor was the fact material that the plaintiff acquired the property at a lower price because of the trespass. The defendant's act was still a wrong against the plaintiff, for which the latter was entitled either to an injunction restraining the defendant from operating its road or to substantial damages. The defendant's line of argument would result in preventing grantees from stopping trespasses which had begun while the property was in their grantor's hands.

This decision seems a necessary result of the previous decisions on the subject. (For a full treatment of these cases see the able article of Mr.

[1] Juries and Jurymen, 139 No. Am. Rev. 1.